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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,014	03/03/2004	Jay S. Walker	03-025	4273
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EXAMINER				
RENDON, CHRISTIAN E				
ART UNIT		PAPER NUMBER		
3714				
MAIL DATE		DELIVERY MODE		
09/10/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/792,014

**Applicant(s)**

WALKER ET AL.

**Examiner**

CHRISTIAN E. RENDÓN

**Art Unit**

3714

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,7-11,14,15,17 and 19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7-11,14,15,17 and 19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This office action is in response to the amendment filed on 2/29/08 in which applicant amends claims 1, 5, and 18, and responds to the claim rejections. The previous Final Office Action is dismissed due to an error corrected by this Non-Final Office Action. Claims 1-20 are still pending.

### ***Claim Rejections - 35 USC § 102***

**Claims 1-2, 10-11 & 14-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Webb (US 6,733,389).**

1. Regarding claim 1-2, Webb discloses a gaming device that uses only symbols as terminating variables (abstract). The game contains a plurality of predetermined symbols that are randomly displayed by the symbol generator (abstract) and in one of the preferred embodiment the location of the symbol or marker is determined during the game (col. 2, lines 30-31). Once a player activates the termination trigger the first game will end (col. 3, lines 30-31), therefore the game is programmed to match one of the current values displayed to a termination value to determine the end of a game. Webb discloses using the concept of "three strikes and your out" as a termination indicator **208** (Webb: col. 10, lines 36-38). Therefore the game teaches terminating a session based on a running count (3) of a number of losing outcomes or strikes. Furthermore the outcome of game session: an award (abstract), a bonus game (col. 1, lines 61-65) or termination (col. 3, lines 30-31) is based on the current value. The art defines the length of game session as the amount of time it takes the player to activate a termination event (col. 3, lines 30-31). This trigger is determined randomly during game play (col. 2, lines 30-31) therefore a game session is not defined by a period of time, a predetermined number of handle pulls (fig. 1A, 18) or winning outcomes. Furthermore a game session may have a plurality of plays of a game since the length of game time is random.

2. Regarding claim 10, the art discloses a player playing the game at a flat rate by depositing the number of credits will allow the game to start (col. 6, lines 1-3). The primary game of the art contains a

game variable that can equal a terminating symbol or variable that is randomly determined during the game (col. 2, lines 30-31) causing the end of a game (col. 3, lines 30-31). Therefore the art inherently incorporates a game variable that corresponds to a probability since the terminating value is determined randomly. Furthermore the limitation of a probability of a player entering a bonus round is also met since that feature is dependent on a random symbol generator (col. 7, lines 35-38).

3. Regarding claims 11 and 14-15, the art discloses initiating a gaming session with the pull of the arm (fig. 1A, 18) resulting in the spinning of the reels and the player will be able to spin the reels again as long as there are some remaining credits (col. 7, lines 23-29). A primary game can end in two ways, either a bonus triggering event appears allowing the player to interact with a secondary or bonus game (col. 2, lines 56-59) or a terminating symbol can appear which will end the game without a chance to win further prizes. Therefore the values of the symbols will determine one of the possible outcomes of the game. Furthermore, a game session is considered prepaid since the game device accepts coins, bills and credit cards before a game is played; as well as vouchers (col. 5, lines 63-66) which are paper receipt worth a value.

**Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colin et al. (2002/0119813 A1) in view of an ordinary artisan in the art.**

4. The wagering game (Colin: par. 20, lines 2-3) disclosed by Colin urges a player to create a poker hand through the selection of five cards from a pool of cards (Colin: par. 7, lines 5-8). Before a player is allowed to start, the CPU evaluates the card selection area to determine all of the possible winning hands (Colin: par. 40). In other words, the game determines a set of predetermined poker hands that will end the game with a winning outcome. The selection of the cards in the right order is also required from the player (Colin: par. 41, lines 5-6) and once the fifth card is selected the game of chance ends (Colin: par. 37, lines 13-14). The prior art however remains silent towards providing a player a game session or a plurality of hand outcomes to the player for their wager. One of ordinary skill would view the game

offered by Colin as too short therefore would alter the game to offer several rounds of gameplay for a set wager value to encourage people to play.

**Claims 7-9 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Jaffe (US 6,551,187).**

5. Jaffe discloses a gaming machine containing pre-determined symbols on slot reels used to represent the primary and secondary game (abstract). The bonus game is triggered when the symbols called "streak" appear on the first reel with the word "Streak" superimposed over any of the symbols on the fifth reel (col. 5, lines 33-36). At this point the reels are stopped, in other words the first game has ended and the "streak" symbol moves from symbol to symbol being chased by the "policeman" symbol or the bonus game-terminating symbol (col. 5, lines 54-56). Each symbol the "streakier" stops at becomes a wild symbol (col. 6, lines 1-2) and the game reevaluates the payline to see if currently it's a winning combination (col. 5, lines 62-67). The game decides when the "policeman catches the streakier" by comparing the number of rounds to a predetermined count (col. 6, lines 59-61). Therefore the running count is one of the many factors used to determine the payout. Furthermore the art contains a game parameter corresponding to a number of game elements "streakier" and "the policeman" that are used to determine an outcome or termination of a game.

***Response to Arguments***

6. Applicant's arguments filed 2/29/08 have been fully considered but they are not persuasive and/or moot as a result of the Applicant's amendments. This Office Action corrects the Examiner's error in applying the prior art as a 102(b) reference when the reference is 102(e) respective to the applicant's claims.

7. As for Webb not disclosing a wagering game, the Examiner views any game that takes bets (Webb: col. 6, lines 8-9) as a wagering game. The reference discloses terminating a first game when one of the current symbols on the reels matches the predetermined termination symbols (Webb: col. 3,

lines 32-34). The prior art teaches a plurality of plays of a game not defined by providing the player a predetermined number of free spins **212** for each first game that is played (Webb: col. 4, lines 17-24). The length of a game is determined randomly therefore teaching not defining a gaming session by a period of time or handle pulls. The symbols called "strikes" are considered by the Examiner as losing outcome since the accumulation of symbols can end the game for a player prematurely (Webb: col. 12, lines 34-36).

8. Regarding the arguments made towards claim 10, the prior art teaches initiating a flat rate play session by depositing the number of credits will allow the game to start (col. 6, lines 1-3) and offering the player a set number of free spins **212** with each session. Furthermore the symbols are randomly determined by the symbol generator (abstract) therefore teaching a probability for a symbol and activating a bonus game (col. 7, lines 35-38). The bonus **204** and strike counters **208** were viewed as teaching the rate of expiration of a game symbol since the completion of either one: collecting 4 bonus symbols or 3 strikes will end the first game and nullifying the accumulated value of the opposing counter.

9. Regarding the arguments towards the Jaffe reference, the prior art teaches a wagering game at a flat rate play (Jaffe: col. 4, lines 5-11) session since a game ends when a "streaker" is caught (Jaffe: col. 7, lines 35-37) which can take one or several reel spins. In other words, the two "streaker" are a plurality of game elements that correspond to a predetermined game outcome called "caught". An outcome is predetermined by the game by comparing the number of rounds to a predetermined count (col. 6, lines 59-61). Furthermore, the Examiner views the two possible outcomes: policeman catching either "streaker" as a plurality of possible outcomes.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN E. RENDÓN whose telephone number is (571)272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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